

**CAHILL GORDON & REINDEL LLP**

SUITE 950

1990 K STREET, N.W.

WASHINGTON, D.C. 20006-1181

EIGHTY PINE STREET  
NEW YORK, N.Y. 10005-1702  
(212) 701-3000  
FAX: (212) 269-5420

TELEPHONE (202) 862-8900  
FACSIMILE (202) 862-8958

AUGUSTINE HOUSE  
6A AUSTIN FRIARS  
LONDON, ENGLAND EC2N 2HA  
(011) 44.20.7920.9800  
FAX: (011) 44.20.7920.9825

CHÉRIE R. KISER | 202-862-8950 | ckiser@cgrdc.com

July 2, 2009

**Via Federal Express and Electronic Mail**

Honorable Susan Goodson  
Honorable Liz Kayser  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
PO Box 13326  
Austin, TX 78711

**Re: Docket 36185, Petition of Intrado Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with GTE Southwestern Incorporated, d/b/a Verizon Southwest**

Dear Arbitrators Goodson and Kayser:

Intrado Inc. ("Intrado"), by its attorneys, respectfully submits these comments in response to Order No. 3 issued by the Public Utility Commission of Texas ("Commission") in the above-referenced matter on June 17, 2009. The Arbitrators request comments as to whether this proceeding should be abated pending a decision by the Federal Communications Commission ("FCC") in its consolidated arbitration proceeding (WC Docket Nos. 08-33 and 08-185). For the reasons set forth below, Intrado respectfully requests that the Commission immediately establish a procedural schedule so that Intrado may reach an interconnection agreement with GTE Southwest Incorporated d/b/a Verizon Southwest ("Verizon") and quickly enter the market to offer competitive 911 service to Texas 911 agencies and public safety answering points ("PSAPs").

Over eight months ago, the Parties proposed a procedural schedule to the Arbitrators and filed the Initial Joint Decision Point List. The Arbitrators, however, declined to set a procedural schedule at that time until "threshold legal issues" could be resolved. As a result, a briefing schedule was established by Order No. 2, and the Parties agreed to waive the Commission's nine-month decision deadline set forth in PUC Rule 21.95(s) and Section 252(b)(4)(C) of the federal Communications Act of 1934, as amended ("FTA") pending resolution of the threshold

legal issues. Briefs and reply briefs addressing the threshold legal issues were filed by the first week of November 2008.<sup>1</sup>

Similar threshold issues were raised in Intrado's arbitrations in Virginia against Embarq and Verizon. The Virginia State Corporation Commission declined jurisdiction over the Virginia arbitrations and, as a result, those arbitrations are now pending before the FCC. As indicated in Order No. 3, the FCC is currently seeking public comment on the "specific issue of how competition in the provision of the 911 network to PSAPs and other public safety agencies would impact the provision of public safety services in *Virginia*."<sup>2</sup>

The FCC's actions in the Virginia arbitrations do not preclude this Commission from moving forward with Intrado's pending arbitration with Verizon. In the past year, Intrado has been granted Section 251 interconnection with several incumbent local exchange carriers to provide competitive 911 services<sup>3</sup> despite the existence of the pending FCC arbitration dockets.<sup>4</sup> These state commissions recognized the appropriateness of moving forward with Intrado's arbitration proceedings, thus permitting public safety to receive the benefits of innovation and competition. In those arbitrations where the threshold legal issue was present, it was addressed along with all other outstanding arbitration issues between the Parties. Indeed, both the Public Utilities Commission of Ohio and a three-judge panel of the North Carolina Utilities Commission specifically determined in recent months that Intrado's 911 service is "telephone exchange service" pursuant to 47 U.S.C. § 153(47) and have granted Intrado 251 interconnection rights.<sup>5</sup>

---

<sup>1</sup> Under the Commission's rules, presiding officers must "endeavor to issue a Proposal for Award on the arbitration within 30 days after the filing of any post-hearing briefs." See PUC Rule 21.95(s).

<sup>2</sup> Order No. 3, dated June 17, 2009 (emphasis added).

<sup>3</sup> See, e.g., Ohio Case No. 07-1216-TP-ARB, *Petition of Intrado Communications, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Embarq and United Telephone Company of Indiana dba Embarq Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Arbitration Award (Sept. 24, 2008) ("*Embarq Ohio Arbitration Award*"); Ohio Case No. 08-537-TP-ARB, *Petition of Intrado Communications Inc. for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company*, Arbitration Award (Oct. 8, 2008) ("*CBT Ohio Arbitration Award*"); West Virginia Case No. 08-0298-T-PC, *Intrado Communications Inc. and Verizon West Virginia Inc., Petition for Arbitration pursuant to § 252(b) of 47 U.S.C. and 150 C.S.R. 6.15.5*, Arbitration Award (Nov. 14, 2008), approved by Commission Order (Dec. 16, 2008) ("*Verizon West Virginia Arbitration Order*"); Massachusetts D.T.C. 08-9, *Petition for Arbitration of an Interconnection Agreement between Intrado Communications Inc. and Verizon New England Inc. d/b/a Verizon Massachusetts*, Arbitration Order (May 8, 2009) ("*Verizon Massachusetts Arbitration Order*").

<sup>4</sup> Public Staff of the North Carolina Utilities Commission noted that the FCC's request for comment on the impact of competition demonstrates that the FCC "may not question Intrado's right to interconnect pursuant to Section 251(c)" of the FTA. See North Carolina Docket P-1187, Sub 2, *Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with BellSouth Telecommunications, Inc. d/b/a AT&T North Carolina*, Comments of the Public Staff on Objections to Recommended Arbitration Order (filed June 18, 2009) ([Attachment 5](#)).

<sup>5</sup> Ohio Case No. 07-1280-TP-ARB, *Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934 as amended, to Establish an Interconnection Agreement with the Ohio Bell Telephone Company dba AT&T Ohio*, Arbitration Award (Mar. 4, 2009) ("*AT&T Ohio Arbitration Award*") ([Attachment 1](#)); Ohio Case No. 07-1280-TP-ARB, *Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934 as amended, to Establish an Interconnection*

As explained in Intrado's Reply Brief, the opening of the local exchange market to competition via Section 251 was "intended to pave the way for enhanced competition in all telecommunications markets, by allowing all providers to enter all markets."<sup>6</sup> This includes the provision of 911/E911 services to Texas 911 agencies. Despite Verizon's attempt to shield its monopoly from competition, Texas 911 agencies are legally entitled to choose a competitive provider such as Intrado. Intrado, however, cannot offer its competitive 911/E911 service without establishing the necessary interconnection and interoperability arrangements with Verizon pursuant to Section 251 of the FTA.<sup>7</sup> There are over 70 different 911 administrative agencies in the state of Texas serving over 250 counties who do not have any choice in 911 service provider. Further delay in the instant arbitration proceeding only forestalls the benefits of innovation and competition to Texas 911 agencies.

For these reasons, Intrado respectfully requests that the Commission direct the Parties to update the Initial Joint Decision Point List and propose a procedural schedule for the Commission's consideration by July 15, 2009.

Respectfully submitted,



Cherie R. Kiser

Counsel for Intrado Inc.

Attachments

cc: Service List

---

*Agreement with the Ohio Bell Telephone Company dba AT&T Ohio, Entry on Rehearing (June 17, 2009) ("AT&T Ohio Rehearing Order") (Attachment 2); North Carolina Docket P-1187, Sub 2, Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with BellSouth Telecommunications, Inc. d/b/a AT&T North Carolina, Recommended Arbitration Order (April 4, 2009) ("AT&T North Carolina RAO") (Attachment 3); see also Ohio Case No. 08-198-TP-ARB, Petition of Intrado Communications Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Verizon North Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, Arbitration Award (June 24, 2009) ("Verizon Ohio Arbitration Award") (Attachment 4).*

<sup>6</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶ 14 (1996) (intervening history omitted), *aff'd* by *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

<sup>7</sup> Intrado Reply Brief at 2.